

EXHIBIT 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JORGE FONSECA and REYES ANDON on behalf
of themselves and others similarly situated,

Plaintiffs,

-against-

DIRCKSEN & TALLEYRAND INC. d/b/a RIVER
CAFE and MICHAEL “BUZZY” O’KEEFE,

Defendants.

Index No. 13-CV-5124 (AT)

**DECLARATION OF SCOTT
STAMFORD**

SCOTT STAMFORD hereby declares as follows under the penalties of perjury:

1. I am over eighteen years of age and am competent to testify regarding the matters stated in this declaration.

2. The following is based upon my knowledge, information, and belief as the General Manager of The River Café restaurant located at One Water Street, Brooklyn, New York 11201. I have been employed in this position since 1999.

3. I began working at the River Café as a valet when the River Café opened in 1977. I was then promoted to bartender and then was promoted to General Manager.

4. When the River Café was open and fully-functioning, it was open for lunch and dinner Monday through Saturday and was open for brunch and dinner on Sunday.

5. The hours of each shift varied, on a daily basis, based largely on when the guests arrived and how long they dined. Most of the wait staff typically arrived for a lunch shift between 10:00 and 10:30 a.m. and left between 3:00 p.m. and 4:30 p.m.

6. The waiter scheduled to close the lunch shift generally began working at 11:00 a.m.

7. Wait staff typically arrived for a dinner shift between 4:00 and 4:30 p.m. and left between 11:00 p.m. and 12:00 p.m.

8. The closing waiter on the dinner shift would generally begin working between 5:00 and 5:15 p.m., though would sometimes begin working as late as 6:00 p.m. if the waiter was also the closing waiter for the lunch shift.

9. The River Café's dining room is staffed by waiters, back waiters, bussers, captains, bartenders, and maître ds.

10. Prior to the River Café's closure in October 2012, there were two maître ds who worked in the restaurant, Patrick Goubit and Javier Rodriguez.

11. The maître ds' job duties were an integral part of the service team. Their functions included, greeting guests, interacting with guests, organizing the dining room seating, running food, bussing food, handing menus to guests, and deciding where guests would be seated. The maître ds would also make the front of house schedule.

12. Until approximately 2011, bussers would rotate in a "floater" assignment that would assist the service by polishing (wiping it off prior to placing it on the table) silverware and do general stocking duties of the dining room during the service. This position received a full busser share from the tip pool.

13. In or around 2011, captains and waiters approached me about the "floater" assignment.

14. The captains and waiters asked me to create a new "polisher" position, whose responsibilities would be limited to polishing.

15. The captains and waiters recommended a dishwasher named Elesio.

16. At the captains' and waiters' suggestion, I offered the "polisher" position to Elesio.

17. The idea to include Elesio in the tip share system was entirely the wait staff's, who decided to give Elesio half of a busser's share of the tip pool, thereby enabling the rest of the wait staff to retain the other half of the busser's share of the tip pool.

18. Elesio did not perform dishwashing duties after he was elevated to the polisher position.

19. The River Café does not employ an "expediter."

20. The River Café had a back waiter position, whose job duties were to run food from the kitchen to the dining room.

21. Reyes Andon and Mark James worked as back waiters in this capacity.

22. Other waiters who worked in the front of the house would also sometimes work as back waiters, depending on the shift. For example, Pedro Alonso would sometimes work as a waiter in the front of the house.

23. As the General Manager, I conduct all of the hiring, including interviewing all candidates for front of house positions and making the decision to hire or not to hire each candidate.

24. I received resumes from candidates and received recommendations directly from members of the wait staff.

25. Based on the candidate's resume, I would make a decision whether to interview the candidate.

26. Except in rare circumstances, I interviewed all of the candidates.

27. I would sometimes involve other members of the wait staff if a candidate listed another language on his or her resume. For example, when a candidate listed Spanish on his or her resume, I asked former maître d Javier Rodriguez to speak with the candidate and confirm his or her proficiency.

28. This was not unique to maîtres d; when a candidate listed Portuguese on his or her resume, I would ask a captain named Silaine Sousa to speak with the candidate to confirm his or her proficiency.

29. After interviewing a candidate, I would decide whether to offer the candidate a trial period at the River Café.

30. During the candidate's trial period, I would speak with the wait staff, usually captains, about the candidate and whether the candidate was qualified for the position.

31. After the training period ended, I made the decision whether to hire the candidate.

32. I communicated the decision to the candidate, usually by telephone.

33. The only times I would ask another employee to communicate the decision was when the candidate's primary language was not English, in which case I would ask someone from the wait staff who spoke that language to communicate the decision.

34. The River Café's owner, Mr. O'Keeffe, and I make all termination decisions for front of house staff at the River Café. Typical reasons for termination include poor service, stealing, tardiness, and customer complaints. I personally investigate customer complaints by speaking with members of the wait staff, and make a disciplinary determination based on my investigation.

35. The tip share system at the River Café was created by the wait staff when the restaurant opened, which I know because I was a tipped employee when the restaurant first

opened. The tip share system is completely operated and maintained by the wait staff without the involvement from the restaurant's management.

36. I believe that Reyes Andon was one of the waiters in charge of counting and distributing the tips.

37. Like waiters and captains, the maître ds were among the service employees who received tips directly from customers. These tips became part of the tip share, which were redistributed to other members of the wait staff.

38. On information and belief, the maître ds received more than \$30 per month in tips directly from customers.

39. Changes to the tip share were entirely within the control of the wait staff, who had complete discretion of which positions were included.

40. No employee has ever complained to me about not being paid for hours worked.

41. I declare under penalty of perjury under the laws of the United States of America that the foregoing statement is true and correct.

Executed this 6th day of January in New York, New York.



Scott Stamford